

SUSAN MCKENZIE,  
Plaintiff,  
-vs-  
KADLEC MEDICAL CENTER,  
Defendant.

)  
) NO. CV-06-5077-LRS  
)  
) **ORDER GRANTING PLAINTIFF'S**  
) **MOTION TO REMAND AND DENYING**  
) **DEFENDANT'S MOTION FOR SUMMARY**  
) **JUDGMENT**  
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This case stems from Plaintiff's employment at Kadlec Medical Center, where she worked as a Registered Nurse. Plaintiff is suing the hospital because of events she claims occurred after Plaintiff was accused of stealing narcotics from the hospital. Plaintiff asserts that she was strip searched and prevented from leaving the premises for a

1 period of time after the allegation was made. Plaintiff submitted to a  
2 urine test as well as a Breathalyzer test. Plaintiff alleges that  
3 Defendant committed the following torts while investigating the drug  
4 allegations: false imprisonment, assault and battery, invasion of  
5 privacy, defamation, and intentional infliction of emotional distress.  
6 Plaintiff's Complaint (Ct. Rec. 30). Plaintiff's complaint also includes  
7 a claim for constructive discharge, but asserts no federal causes of  
8 action. *Id.*

9 Plaintiff brought her cause of action in Benton County Superior  
10 Court, and Defendant removed the case to Federal Court. Plaintiff then  
11 moved to remand. Defendant responded, in part, by moving for summary  
12 judgment asserting that Plaintiff's claims are alleged violations of the  
13 collective bargaining agreement between Kadlec and the Washington State  
14 Nurses' Association and are therefore preempted by Section 301 of the  
15 Labor Management Relations Act and should be processed under the terms  
16 of the Collective Bargaining Agreement. (Ct. Rec. 11 at 2).

## 17 II. DISCUSSION:

18 As a general rule, an action is removable to federal court only if  
19 it might have been brought there originally. 28 U.S.C. § 1441(a); *Duncan*  
20 *v. Stuetzle*, 76 F.3d 1480, 1485 (9<sup>th</sup> Cir. 1996). Thus, in order for  
21 removal to be proper, the federal court must have original subject matter  
22 jurisdiction over the suit. 28 U.S.C. §1441(a); *Snow v. Ford*  
23 *Motor Co.*, 561 F.2d 787, 789 (9<sup>th</sup> Cir. 1977). The removal statute is  
24 strictly construed and the Court must reject federal jurisdiction if  
25 there is any doubt as to whether removal was proper. *Duncan v. Stuetzle*,  
26 *supra*. The burden of establishing federal jurisdiction is on the party

1 seeking removal. *Prize Frize, Inc. v. Matrix (U.S.), Inc.*, 167 F.3d  
2 1261, 1265 (9th Cir. 1999).

3 Section 301 of the LMRA provides that all suits seeking relief from  
4 violations of a collective bargaining agreement may be brought in federal  
5 court. *Humble v. Boeing Co.*, 305 F.3d 1004, 1007 (9<sup>th</sup> Cir. 2002). The  
6 Supreme Court has held that § 301 acts to preempt state law claims that  
7 substantially depend on the collective bargaining agreement. *Id.*  
8 However, the Supreme Court has further held that § 301 has not become a  
9 "mighty oak" to cover all state law claims. *Livadas v. Bradshaw*, 512  
10 U.S. 107, 122 (1994).

11 In *Lingle v. Norge Division of Magic Chef*, 486 U.S. 399, 413 (1988),  
12 a wrongful discharge case, the Supreme Court found that the Plaintiff's  
13 tort claims were not preempted. In reversing the Court of Appeals  
14 decision which found the retaliatory discharge claim inextricably  
15 intertwined with the collective-bargaining agreements, the Supreme Court  
16 stated:

17 We agree with the court's explanation that the state-law  
18 analysis might well involve attention to the same factual  
19 considerations as the contractual determination of whether  
20 Lingle was fired for just cause. But we disagree with the  
21 court's conclusion that such parallelism renders the state-law  
22 analysis dependent upon the contractual analysis. For while  
23 there may be instances in which the National Labor Relations  
24 Act pre-empts state law on the basis of the subject matter of  
25 the law in question, § 301 pre-emption merely ensures that  
26 federal law will be the basis for interpreting  
collective-bargaining agreements, and says nothing about the  
substantive rights a State may provide to workers when  
adjudication of those rights does not depend upon the  
interpretation of such agreements. In other words, even if  
dispute resolution pursuant to a collective-bargaining  
agreement, on the one hand, and state law, on the other, would  
require addressing precisely the same set of facts, as long as  
the state-law claim can be resolved without interpreting the  
agreement itself, the claim is "independent" of the agreement  
for § 301 pre-emption purposes. *Lingle*, 486 U.S. at 408-410.

1 This Court finds that Ms. McKenzie's claims are independent of the  
2 collective bargaining agreement for these purposes. The Court notes that  
3 the Plaintiff alleges facts giving rise to claims that constitute state  
4 torts, namely, false imprisonment, assault and battery, invasion of  
5 privacy, defamation, and intentional infliction of emotional distress,  
6 none of which are spoken to in the collective bargaining agreement.  
7 Plaintiff's Complaint (Ct. Rec. 30). Moreover, it appears that Ms.  
8 McKenzie's claims stem from the manner in which she was treated at the  
9 time she was allegedly strip searched, and subjected to both a urinalysis  
10 test and a Breathalyzer. The Plaintiff's claims do not require this  
11 Court to interpret the terms of the collective bargaining agreement.  
12 Therefore, the claims are not preempted.

13 For the reasons orally set out at the time these motions were argued  
14 and supplemented by the foregoing, **IT IS ORDERED:**

15 1. Plaintiff's Motion to Remand (Ct. Rec.8) is **GRANTED**.

16 2. Defendant's Motion for Summary Judgment ( Ct. Rec. 11) is  
17 **DENIED** in light of the remand.

18 **IT IS SO ORDERED.** The Clerk is hereby directed to file this Order,  
19 furnish copies to counsel and **REMAND** this case to Benton County Superior  
20 Court for further proceedings.

21 **DATED** this 5th day of February, 2007.

22 *s/Lonny R. Suko*

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24 LONNY R. SUKO  
25 UNITED STATES DISTRICT JUDGE  
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